

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Modesto, California

August 1, 2000 at 9:00 a.m.

-
1. 00-90300-A-13 RAY & TRACY PARMER CONT. HEARING ON MOTION FOR
OHP #1 RELIEF FROM AUTOMATIC STAY ETC
COUNTRYWIDE HOME LOANS, VS. 6/6/00 [14]

Tentative Ruling: The motion is denied. While the debtors have admittedly defaulted on the original plan resulting in a post petition delinquency, that delinquency will be cured as part of the modified plan. Given the confirmation of the modified plan, there is no cause to terminate the stay.

2. 00-90300-A-13 RAY & TRACY PARMER CONT. HEARING ON MOTION TO
CLH #1 MODIFY CONFIRMED CHAPTER 13
PLAN
6/16/00 [19]

Tentative Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329. The only creditor whose claim is significantly affected by the modification is Countrywide. The plan cures a post petition delinquency. The cause of the delinquency, Mrs. Parmer's unemployment, has ended and it appears the modified plan is feasible.

3. 97-94218-A-13 ESTHER M. AUGUSTINE HEARING ON MOTION FOR
JMG #1 RELIEF FROM AUTOMATIC STAY ETC
EQUICREDIT CORPORATION VS. 6/29/00 [35]

Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay six post-petition installments. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

4. 98-94119-A-13 RICK & KIMBERLEE PACKARD HEARING ON MOTION FOR
AJH #1 RELIEF FROM AUTOMATIC STAY ETC
COUNTRYWIDE HOME LOANS, INC. VS. PART II
7/6/00 [35]

Tentative Ruling: The motion is denied. While the debtor had failed to pay three post petition installment payments directly to the movant in breach of the plan, that default was cured after the filing of the motion.

5. 00-90230-A-13 FRANK & CONNIE MARTINEZ HEARING ON MOTION FOR
LJB #1 RELIEF FROM AUTOMATIC STAY ETC
WELLS FARGO HOME MORTGAGE, INC. VS. PART II
7/11/00 [12]

Tentative Ruling: The motion is denied. The court has confirmed a plan. That plan provides for payment of the movant's claim. The plan is not in default. The motion asserts that the debtor did not pay the May, June, and July 2000 payments. It appears from the debtor's evidence that all these payments have been made. Once a plan or a modified plan is confirmed, the only ground for terminating the stay is a breach of the plan. There is no breach. No fees and costs are awarded.

6. 96-94734-A-13 CARLA VIRAMONTES HEARING ON MOTION FOR
SPS #1 RELIEF FROM AUTOMATIC STAY
GREENPOINT MORTGAGE FUNDING, INC. VS. PART II
7/10/00 [22]

Tentative Ruling: The motion is denied. The court has confirmed a plan. That plan provides for payment of the movant's claim. Both the pre-petition arrears and the post petition installment payments are paid through the plan. The trustee's records shows that all payments have been made albeit two post petition installments were paid late. The debtor shall pay the late charges directly to counsel for the movant within 15 days. As for the remainder of the post petition charges, the court has not awarded any attorneys fees or other costs and will not because the movant has not established that the subject real property exceeds the outstanding principal and interest claim of the movant as required by 11 U.S.C. § 506(b). Given that there is no substantial breach of the plan, there is no cause to terminate the stay.

7. 97-93635-A-13 DEAN & CATHY GATEWOOD HEARING ON MOTION FOR
KBR #1 RELIEF FROM AUTOMATIC STAY ETC
GMAC MORTGAGE CORPORATION OF PA PART II
AND FEDERAL NATIONAL MORTGAGE 7/3/00 [35]

Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay six post petition direct installment payments. These are the payments due for June, 1999; September, 1999, December, 1999; February, 2000; April, 2000; and June, 2000. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run

concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d). **Counsel for the movant is reminded that the notice should inform the debtor that written opposition is due five court days, not five days, prior to the hearing. LBR 4001-1, Part II (a), 9014-1, Part II(c). Also, every motion for relief from the automatic stay must be accompanied by LBR 4001-1, Part II(b)(7).**

8. 99-90340-A-13 GERALD & KATHLEEN SAYLOR HEARING ON MOTION FOR
MPD #1 RELIEF FROM AUTOMATIC STAY
ATLANTIC MORTGAGE & INVESTMENT PART II
CORPORATION VS. 7/13/00 [22]

Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay one post-petition installments. Fees and costs of \$675 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

9. 96-91555-A-13 CANDIDO & VELMA DURAN HEARING ON MOTION FOR
CD #1 RELIEF FROM AUTOMATIC STAY
MISSION HILLS MORTGAGE CORP. VS. PART II
7/10/00 [68]

Tentative Ruling: The motion is denied. The court has confirmed a plan. That plan provides for payment of the movant's claim. The plan is not in default. The motion asserts that the debtor did not pay the June and July 2000 payments. It appears from the debtor's evidence that all these payments have been made albeit after the motion was filed. Once a plan or a modified plan is confirmed, the only ground for terminating the stay is a breach of the plan. There is no breach. No fees and costs are awarded.

10. 00-92160-A-13 KALESHA DUPREE HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL,
CONVERSION OR IMPOSITION
OF SANCTIONS FOR FAILURE OF
DEBTOR TO PAY INSTALLMENT FEE
OF \$33.00 DUE ON JULY 5, 2000
7/10/00 [13]

Tentative Ruling: If not already current, the debtor has three days from entry of an order to become current on her installment filing fee. In the future, if an installment is missed, the case will be dismissed without further notice or hearing.

11. 00-92131-A-13 DARRELL & JANET BILLINGS CONT. HEARING ON MOTION
FW #1 TO USE CASH COLLATERAL
6/12/00 [6]

Tentative Ruling: None. Appearances are required.

12. 99-93931-A-13 SHARON THOMAS-JOHNSON HEARING ON FIRST INTERIM
SAC #1 APPLICATION FOR ATTORNEYS'
FEES OF SCOTT A. COBEN &
ASSOCIATES
7/6/00 [18]

Tentative Ruling: Counsel for the debtor requests approval of compensation and payment of the approved compensation prior to all other creditors (other than the trustee's compensation) as an administrative expense. This is appropriate if counsel has not elected to be bound by the court's Guidelines for Payment of Attorneys' Fees in Chapter 13 Cases. It appears from the plan that counsel has opted out of the guidelines. This is apparent from the fact that counsel indicated that he would be paid on an hourly basis rather than the flat fee basis stated allowed by the Guidelines (Incidentally, counsel has impermissibly altered the court mandatory plan by excising certain language from the portion dealing with administrative expenses and attorneys' fees. Such alterations will be given no effect. See Section V, Chapter 13 Plan.)

However, counsel filed the "Rights and Responsibilities" agreement indicating that he would be paid pursuant to the Guidelines. This agreement specifically incorporates the Guidelines.

Given this ambiguity, the court concludes that counsel has agreed to be bound by the Guidelines. Therefore, he can be compensated up to \$1,750 less the retainer. This amount shall be paid, retroactive to confirmation, at the rates specified in the Guidelines. If additional compensation above \$1,750 is appropriate, counsel may file a further fee application as permitted by the Guidelines.

13. 00-91036-A-13 FRANK LEACH & HEARING ON CONFIRMATION
VLC #2 YVONNE MAH-LEACH OF CHAPTER 13 PLAN
6/30/00 [10]

Tentative Ruling: The motion is denied and the objection is sustained. The plan is not feasible as witnessed by the failure of the debtors to make two plan payments.

14. 99-93142-A-13 JOHN SCHAUF CONT. HEARING ON MOTION TO
FW #1 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
6/16/00 [18]

Tentative Ruling: The motion is denied and the objection is sustained. The plan is not feasible because the plan payment must be \$485 for 52 months if the plan is to complete within its term and pay creditors the promised dividends.

15. 00-92046-A-13 CHARLES ANDREW COOPER, JR. & HEARING ON OBJECTIONS
MWF #1 KATHY MARIE GOLDSBY-COOPER TO PROPOSED CHAPTER 13 PLAN
FILED BY FLEET MORTGAGE
GROUP, INC.
7/12/00 [25]

Tentative Ruling: The objection is sustained. The creditor asserts that the pre-petition is \$60,654.27 while the debtor maintains that it is 22,640.00. A claim has been filed for \$60,654.27 and it has not been objected to by the debtor. In response to the objection to the plan, the debtor has filed no evidence.

Normally, the court would confirm the plan despite the dispute regarding the claim amount. The plan's confirmation does not determine the amount of a claim. A proof of claim establishes the amount and character (secured, priority, or unsecured) of a claim. The plan requires that claims be paid as filed rather than as stated in the plan. Further, the plan is designed to account for the problem caused when claims are more than anticipated by the debtor. The debtor may take up to 6 months beyond the stated term (not to exceed 60 months) to complete the plan. If this cannot be done, General Order 00-02, ¶ 6, requires the debtor to object to claims, modify the plan, or both, in order that the plan will pay claims as promised and required by the bankruptcy code.

Here, however, the claim is so large that the plan cannot possibly be feasible. And the debtor has come forward with no evidence that convinces the court that the claim is substantially overstated. Therefore, confirmation is denied because the plan is not feasible.

16. 99-95251-A-13 JESSIE & PATRICIA SANTOS HEARING ON MOTION TO
FW #3 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
7/10/00 [42]

Tentative Ruling: The motion is denied and the objection is sustained. The debtors defaulted on their original plan when they failed to make post petition installment payments to their home lender. The home lender obtained relief from the automatic stay. The debtors and the lender then entered into a forbearance agreement that provides for the cure of the pre-petition and post-petition arrears to the lender by increasing the monthly installment payment from \$1,049 to \$1,790.

The trustee characterizes this as a post petition debt incurred without court authority as required by the debtors' initial plan. This is not a problem created by incurring a post petition. Rather, the debtors are proposing to cure a default outside the plan. This violates In re Fulkrod, 973 F.2d 801 (9th Cir. 1992). Fulkrod holds that all impaired pre-petition debts that are payable during the term of the plan must be paid through the chapter 12 plan. The statutes in issue in Fulkrod, 11 U.S.C. §§ 1225(a)(5)(B)(ii) and 1226(c), are exactly mirrored in chapter 13 by 11 U.S.C. §§ 1325(a)(5)(B)(ii) and 1326(c). Thus, to the extent the debtors are curing pre-petition arrears with the direct payments, they run afoul with Fulkrod.

The debtors are also curing a post-petition default directly to the lender. Fulkrod only dealt with pre-petition arrears. However, the answer is the same. 11 U.S.C. § 1322(b)(3) provides that a plan may cure a default. It does not specify that the default must be a pre-petition default. Courts generally hold that a plan may cure a post-petition default. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995); Green Tree Acceptance v. Hoggie (In re Hoggie), 12 F.3d 1008, 1010-11 (11th Cir. 1994); Mendoza v. Temple Inland Mortgage (In re Mendoza), 111 F.3d 1264, 1268 (5th Cir. 1997). And under the logic of Fulkrod,

if the plan does provide for the cure of a post petition default, the payments must flow through the plan and the trustee.

Were the court to hold to the contrary, debtors would be free to negotiate agreements with creditors holding secured or nondischargeable claims that required payment in full outside of the plan even though similarly situated creditors were not paid as much or were paid on less advantageous terms. Such discrimination is not permitted by 11 U.S.C. § 1322(b)(1).

The court is not holding that the debtors are without remedy. Relief from stay does not preclude the possibility that a plan can be confirmed curing the default that prompted relief from the automatic stay.

17. 99-92854-A-13 COLETTE STEWARD
FW #3
- HEARING ON MOTION TO
MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
7/5/00 [28]

Tentative Ruling: The motion is granted given the sale of the vehicle and the payment of the secured claim in full. Had the vehicle not been sold and the loan paid, the objection would have merit. The claim is a community debt that comes due during the term of the plan. It should have been provided for in the plan.

The husband's purchase of a new vehicle presents a different problem even though the debtor did not sign the loan for her husband's new car. This means she does not have any personal liability for the loan. However, all of the community property is answerable for the loan if it is not repaid. This includes the debtor's post petition income. For that reason, authority to borrow the money should have been obtained from the court. The estate may nonetheless be protected by 11 U.S.C. §§ 362(a) and 1305(c) if the husband breaches the new loan. Despite this potential problem, the court does not believe denial of confirmation is appropriate. If and when the new lender presents a claim against the estate or attempts to enforce its claim against community property, the court will consider a motion to dismiss or other appropriate response.

18. 99-93966-A-13 MANSOOR & PARVIN SOLEIMANI
FW #12
- CONT. HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM OF MAX
FLOW CORP. ON BEHALF OF
WELLS FARGO BANK
6/7/00 [38]

Tentative Ruling: The objection is overruled. The claim does not include post-petition interest disallowable under 11 U.S.C. § 502(b)(2). The interest was earned prior to the filing of the petition.

19. 97-92070-A-13 JEANNIE STUMP
FW #1
- HEARING ON MOTION TO
MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
6/23/00 [39]

Tentative Ruling: The motion is granted and the objection is overruled. Given the disallowance of Merchant's \$9,095 unsecured claim (see objection on this calendar), the plan is feasible and will be completed within the state

term.

20. 99-93076-A-13 THEODORE & MICHELLE JONES CONT. HEARING ON MOTION TO
FW #2 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
5/17/00 [69]

Tentative Ruling: The motion is denied and the objection is sustained. The plan pays no interest on the secured claim of the IRS. Since the claim is not paid in full on the effective date, the claim must be paid with a market rate of interest. 11 U.S.C. § 1325(a)(5)(B)(ii). Second, the plan is not feasible as evidenced by the debtor's failure to pay the May plan payment.

21. 00-91686-A-13 MICHAEL & LYNETTE STEWART CONT. HEARING ON OBJECTIONS
SPS #1 TO CONFIRMATION OF PLAN AND
OPPOSITION TO MOTION TO VALUE
COLLATERAL OF AMERICAN GENERAL
FINANCE
6/19/00 [12]

Tentative Ruling: The objections to confirmation of the plan and the valuation motion are sustained. The debtor's plan is built on the premise that the debtor will be able to value the creditor's collateral, after the deduction of the senior lien, at \$0. If this were so, In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997) and In re Bartee, ___ F.3d ___, 2000 W.L. 621400 (5th Cir. 2000), would permit the claim to be stripped off the house. However, the court concludes that the subject real property has a value of \$128,000. After deducting the senior deed of trust and taxes totaling \$123,039, there remains almost \$5,000 in equity. Therefore, Nobelman v. American Savings Bank, 508 U.S. 324 (1993), prevents the under-secured portion of the claim from being stripped off the claim. The entire claim must be paid in full. The plan fails to do this and therefore it violates 11 U.S.C. §§ 1322(b)(2) and 1325(a)(5)(B).

The debtor has 15 days to file an amended plan and a motion to confirm it. Once filed, the debtor has 30 days to obtain confirmation. If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

22. 96-94886-A-13 STEVE & SONJA SOLARO
SAS #10

HEARING ON PETITION FOR
AUTHORIZATION TO INCUR
INDEBTEDNESS TO PURCHASE
REAL PROPERTY (OST)
7/12/00 [58]

Tentative Ruling: The motion is denied. The court will not approve a purchase of a \$300,000 while a debtor is in a chapter 13 case that pays nothing to unsecured creditors. While this court is generally reluctant to not permit a debtor to save a home, whatever its value, by confirming a plan, this is very different. The debtor is asking the court to approve the purchase of a new home. The court will not do this under the circumstances presented by this case.

23. 00-90790-A-13 HECTOR & MARIA DELAFUENTE
ALC #3

HEARING ON MOTION TO
CONFIRM FIRST MODIFIED
CHAPTER 13 PLAN
7/3/00 [54]

Tentative Ruling: The objection is overruled. The original plan provided for the secured claim of PSB in Class 1. This meant that the debtor would pay the regular loan installment, \$434.30 each month, directly to PSB and the pre-petition arrears would be cured through the plan. However, the court sustained objections to the original plan. The debtor then proposed a modified plan that was accompanied by a valuation motion concerning PSB's collateral. The motion was granted at a hearing on June 27, 2000. As a result, and pursuant to In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997) and In re Barte, ___ F.3d ___, 2000 W.L. 621400 (5th Cir. 2000), PSB's claim is effectively stripped from its collateral. That is, because its collateral has no value, its secured claim is \$0 and may be paid nothing by the plan.

Therefore, the debtor now has \$907.11 in disposable income (the \$472.81 reported on Schedules I and J and \$434.30 previously paid PSB each month). The objection that the debtor cannot afford to pay the \$800 plan payment is overruled.

As to the trustee's request for oral argument, his request is denied (this is a final ruling). He apparently wishes to voice objections in light of a stipulation with American General. If that stipulation gives rise to plan objections, they should be filed and argued on their own merit. It makes no sense to argue them in connection with another creditor's objection.

24. 99-94091-A-13 RICHARD D'ALBA
FW #1

HEARING ON MOTION TO
MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
7/5/00 [23]

Tentative Ruling: The motion is denied and the objection is sustained. The modified plan is not feasible. The monthly plan payment must equal \$525 if the plan is to be completed within its term and pay the promised dividends. Schedules I and J reveal disposable income of \$50.73.

25. 98-92296-A-13 PATRICK J. RHEM & HEARING ON MOTION TO
DJB #3 JACQUELINE LEE-RHEM MODIFY CONFIRMED CHAPTER 13
PLAN (OST)
7/17/00 [74]

Tentative Ruling: The motion is granted on condition that the plan is further modified to provide for suspension of all delinquencies through July and for a plan payment of \$1,171 beginning in August. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

26. 99-91517-A-13 MICHAEL R. VANSLYKE HEARING ON MODIFICATION
OF DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
7/17/00 [34]

Tentative Ruling: No telephonic appearance is permitted to counsel for the party placing this matter on calendar because it did not include a motion control number as required by the local rules.

The motion is denied and the objection is confirmed. The court would confirm the third modified plan but for one problem. The court has terminated the automatic stay as to PNC. As a result, and pursuant to General Order 97-02, ¶ 9, the trustee has ceased making payments to PNC. This will not change if the modified plan is confirmed. Yet, the proposed plan assumes that PNC is still subject to the stay. Has PNC's claim been cured? Has it agreed to accept the cure of just the post petition arrearage? Until this is cleared up, the plan cannot be confirmed.

27. 00-92165-A-13 HUMPHRY & CONNIE TIMP HEARING ON OBJECTIONS
TO PROPOSED CHAPTER 13
PLAN AND CONFIRMATION FILED
BY CHASE MANHATTAN MORTGAGE
CORP.
7/13/00 [12]

Tentative Ruling: The objections are sustained in part. The debtors have filed three chapter 13 petitions in quick succession. During the first two cases, the debtors failed to make the direct payments to the objecting creditor required by their plans. By way of explanation, the debtors assert that Mrs. Timp has a medical condition that caused her to forget to pay her bills. If she had the medical condition, why didn't Mr. Timp pay the bills? Further, while the medical condition may have caused forgetfulness and late payment, this does not explain why the money is not now available to catch up the missed installments. Further, the debtors have significantly understated the arrearage (\$34,361.15 versus \$23,365.95). Based on the foregoing the court concludes the plan is not feasible and that it has been proposed in bad faith.

28. 99-91966-A-13 KENNETH & LINDA JONES
00-9139
KENNETH & LINDA JONES VS.

CONT. HEARING ON MOTION FOR
A TEMPORARY RESTRAINING ORDER
7/17/00 [7]

PRINCIPAL RESIDENTIAL MORTGAGE

Tentative Ruling: No telephonic appearance is permitted to counsel for the party placing this matter on calendar because it did not include a motion control number as required by the local rules.

The evidence presented by the debtors demonstrates that they have likely tendered all amounts due since the filing of the petition and that they have abided by the terms of the adequate protection order. The debtors have demonstrated the probable validity of their claim. The loss of their home qualifies as irreparable injury. Because the court will condition the preliminary injunction of the debtors continuing payment of post petition installments, the balance of hardships tilts in favor of the debtors - they have much more to lose if the injunction is not granted than the defendant will lose if it is granted. No bond or undertaking is required. 11 U.S.C. § 7065.

Because there is little need for discovery, the court will set a trial at the hearing.

29. 00-91767-A-13 MICHAEL A. WEAKLEY

HEARING TO CONFIRM
AMENDED CHAPTER 13 PLAN
7/7/00 [12]

Tentative Ruling: No telephonic appearance is permitted to counsel for the party placing this matter on calendar because it did not include a motion control number as required by the local rules.

The motion is denied and the objection is sustained. First, the plan is not feasible as evidenced by the fact that the debtor has failed to make all plan payments to the trustee. Second, the treatment of AL Financial is premised on a valuation of its collateral at \$2,500. This motion was not served on AL Financial. Further, the text of the plan contains contradictory statements regarding the value of its collateral. Because the motion to value the collateral cannot be granted, the plan cannot be confirmed. Third, the plan provides no dividend to unsecured creditors even though the stream of payments is sufficient to pay a 100% dividend. The failure to provide this dividend violates 11 U.S.C. § 1325(b) - there is disposable income to pay a dividend but the plan fails to do so.

30. 00-90990-A-13 ZELLA WILTZ

HEARING ON MOTION FOR
ORDER APPROVING AMENDED
CHAPTER 13 PLAN
7/7/00 [17]

Tentative Ruling: None.

31. 00-90990-A-13 ZELLA WILTZ

CONT. HEARING ON MOTION FOR
ORDER OF DISMISSAL UNDER 11
U.S.C. SECTION 1307
6/30/00 [13]

Tentative Ruling: None.

MATTERS REMOVED FROM CALENDAR FOR RESOLUTION WITHOUT ORAL ARGUMENT BEGIN HERE. IN THESE MATTERS, THE RESPONDENT TYPICALLY FAILED TO FILE WRITTEN OPPOSITION AS REQUIRED BY LOCAL RULES 4001-1 AND/OR 9014-1 OR A PRIOR COURT ORDER. GIVEN THE LACK OF WRITTEN OPPOSITION, OR FOR THE OTHER REASONS GIVEN IN THE RULING, THESE MATTERS ARE SUITABLE FOR DISPOSITION WITHOUT HEARING. IF THE MOVANT/OBJECTING PARTY AND RESPONDENT HAVE AGREED TO A CONTINUANCE OR TO A STIPULATION, NOTIFY THE COURTROOM DEPUTY CLERK AND THE FINAL RULING WILL BE VACATED. IF YOU DO NOT NOTIFY THE COURTROOM DEPUTY CLERK, INCLUDE A PROVISION VACATING THE FINAL RULING IN YOUR STIPULATION OR ORDER.

32. 99-91908-A-13 SHAWN & DORA CAVE
OHP #1
COUNTRYWIDE HOME LOANS, INC. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY ETC
PART II
6/26/00 [36]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay four post-petition installments. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

33. 97-94721-A-13 JUAN L. ELIAB, JR. &
TJH #1 SONYA D. ELIAB
ASSOCIATES FINANCIAL SERVICES
COMPANY OF CALIFORNIA, INC. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
7/5/00 [59]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay eight post-petition installments.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

34. 97-94726-A-13 LLOYD & DEBORAH RUTHERFORD HEARING ON MOTION FOR
ASW #1 RELIEF FROM AUTOMATIC STAY
NATIONWIDE MORTGAGE CORPORATION VS. PART II
6/30/00 [45]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay nine post-petition installments. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

35. 96-92841-A-13 KHAMNGA & BUNMY PHIMMASONE HEARING ON MOTION FOR
ASW #2 RELIEF FROM AUTOMATIC STAY
TEMPLE-INLAND MORTGAGE CORP. VS. PART II
7/7/00 [45]

Final Ruling: There is a service defect. The motion was served on counsel for the debtors at an incorrect address. Counsel filed a change of address on April 6, 1998. The court orders the hearing continued to August 29, 2000, at 9:00 a.m., in order that proper notice can be given.

36. 98-92353-A-13 STEVEN & NANCY TAYLOR HEARING ON MOTION FOR
SJM #1 RELIEF FROM AUTOMATIC STAY
TEXAS COMMERCE BANK NATIONAL PART II
ASSOCIATION AS CUSTODIAN VS. 7/3/00 [45]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay two post-petition installments. Fees and costs of \$675 or, if less, the amount actually billed to the movant by counsel,

are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

37. 00-90162-A-13 RAYMOND O. NEWMAN III
RDB #1
CITIMORTGAGE, INC. VS.

CONT. HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY ETC
6/22/00 [11]

Final Ruling: After this ruling was prepared, the parties agreed to continue the hearing to August 15, 2000, at 9:00 a.m. If nothing additional is filed, this will be the tentative ruling. The motion is denied. The court has confirmed a plan. That plan provides for payment of the movant's claim. The plan is not in default. The motion asserts that the debtor did not pay five post petition monthly installment payments. It appears from the debtor's evidence that all these payments have been made. Once a plan or a modified plan is confirmed, the only ground for terminating the stay is a breach of the plan. There is no breach. No fees and costs are awarded.

38. 00-91664-A-13 ROBERT & ROSA LEONARD
AC #1
WELLS FARGO HOME MORTGAGE, INC. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY ETC
PART II
7/10/00 [10]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay three post-petition installments. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

39. 99-91466-A-13 STEVEN PARREIRA
MPD #1
ATLANTIC MORTGAGE & INVESTMENT
CORPORATION VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
7/13/00 [50]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay four post-petition installments. Fees and costs of \$675 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

40. 99-90769-A-13 KIMBRA L. SOUTHERN
SPS #1
PRINCIPAL RESIDENTIAL MORTGAGE,
INC. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
7/13/00 [21]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay five post-petition installments. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

41. 99-95476-A-13 MERVYN D. DEVERA
EGS #1
FIRST NATIONWIDE MORTGAGE
CORPORATION VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
7/5/00 [21]

Final Ruling: The parties have resolved this matter by stipulation. The parties shall submit a written stipulation together with an appropriate order.

42. 00-92178-A-13 GREG J. BRAUN

HEARING ON MOTION FOR

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's real property. This property is not the debtor's residence. The plan classifies this claim within Class 1 and requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay one post-petition installments. This plan breach is cause to terminate the stay. There is additional cause. First, the property is rented and the debtor has failed to account for the rent. This cash collateral cannot be used without a court order or the movant's consent. The debtor obtained neither. Second, this is the third bankruptcy petition that has impeded a nonjudicial foreclosure. During this time, a total of loan payment has been made by the borrower/property owner. Fees and costs of \$660 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived.

43. 00-92178-A-13 GREG J. BRAUN
ASW #1

HEARING ON OBJECTION
TO CHAPTER 13 PLAN FILED
BY NEW CENTURY MORTGAGE
CORPORATION
6/26/00 [8]

Final Ruling: The debtor has failed to respond to the matter on calendar. Because the debtor has come forward with no opposition, this matter is suitable for disposition without hearing. The objections are sustained. First, the plan is proposed in bad faith. The history recounted in the objection and the motion for relief from stay indicates that the debtor and his spouse and predecessor have used chapter 13 as a means of delaying a foreclosure and without any intent of reorganizing. Given the objection, it was incumbent on the debtor to come forward with evidence that the plan had been proposed in good faith. Fed.R.Bankr.P. 3015(f). The debtor has come forward with no evidence. The plan does not comply with 11 U.S.C. § 1325(a)(3). Second, the plan is not feasible as witnessed by the fact that the debtor has failed to make the first direct payment required by the plan.

44. 00-90391-A-13 JAMES RICHARD GILES
ASW #2
TEMPLE-INLAND MORTGAGE CORP. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
7/7/00 [40]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and

all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay two post-petition installments. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

45. 00-90797-A-13 RICHARD GUNTHER
SPS #1
CHASE BANK OF TEXAS, NA VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
7/5/00 [20]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay three post-petition installments. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

46. 00-91402-A-13 ROY E. NICOLAS

HEARING TO CONFIRM
AMENDED CHAPTER 13 PLAN
7/7/00 [19]

Final Ruling: The motion is granted on condition that the claim of GMAC is paid within 30 days after confirmation. There are no timely objections to the amended plan. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

47. 00-91402-A-13 ROY E. NICOLAS
SW #1

CONT. HEARING ON OBJECTION
TO DEBTOR'S CHAPTER 13 PLAN
FILED BY GMAC
5/30/00 [10]

Final Ruling: This objection was interposed to the original plan. A modified plan has been filed providing for the sale of the objecting creditor's collateral and the payment of the claim in full. In connection with the objection, the creditor is awarded \$400 in fees and costs.

48. 96-92106-A-13 CHRISTOPHER & ASTRID MONROE HEARING ON MOTION FOR
DN #5 PERMISSION TO SELL AN ASSET
OF THE ESTATE AND USE SALE
PROCEEDS
7/7/00 [59]

Final Ruling: The motion to sell real property is granted on the condition that the sale proceeds are used to pay all liens of record in a manner consistent with the plan. Insofar as surplus sale proceeds are available, an amount sufficient to pay all remaining plan obligations shall be paid over to the trustee.

49. 00-90210-A-13 ELIZABETH L. COX HEARING ON APPLICATION
SML #4 FOR ALLOWANCE OF ATTORNEY
FEES AND COSTS (1-12-00
THROUGH 6-13-00)
6/30/00 [62]

Final Ruling: The motion is granted. The additional fees represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. The compensation is to be paid through the plan in a manner consistent with the Chapter 13 Fee Guidelines. The applicant voluntarily elected to be bound by those guidelines.

50. 00-91722-A-13 PORFIRIO & BERNICE GUZMAN HEARING ON MOTION TO
FW #1 AMEND DEBTORS' UNCONFIRMED
CHAPTER 13 PLAN
6/27/00 [16]

Final Ruling: The motion is granted. There are no timely objections to the amended plan. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

51. 00-91722-A-13 PORFIRIO & BERNICE GUZMAN HEARING ON MOTION TO
FW #2 INCUR DEBT
6/27/00 [20]

Final Ruling: The motion is granted. The debtors have established a need for the loan and the vehicle they will purchase with it.

52. 00-91722-A-13 PORFIRIO & BERNICE GUZMAN HEARING ON TRUSTEE'S
RDG #1 OBJECTION TO CONFIRMATION OF
PLAN AND MOTION TO DISMISS
6/21/00 [8]

Final Ruling: The objection is overruled as moot. The debtors have amended their plan to eliminate the concern raised by the trustee. The trustee has not filed objections to the amended plan.

53. 00-90323-A-13 RAYMOND & JONI PACHECO CONT. HEARING ON MOTION TO
DN #5 DETERMINE VALUE OF COLLATERAL
FILED BY FIRST PLUS FINANCIAL
4/11/00 [17]

Final Ruling: The hearing has been continued by the parties to August 15, 2000, at 9:00 a.m.

54. 99-93329-A-13 ROBERT & LINDA MCCLURE HEARING ON MOTION TO
FW #1 VALUE COLLATERAL OF UNITED
CONSUMER FINANCIAL SERVICES
6/29/00 [28]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of \$350 on the date of the petition. \$350 of its claim is an allowed secured claim. When paid \$350, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

55. 99-94329-A-13 JAMES & MARTHA HARRIS HEARING ON MOTION TO
FW #4 INCUR DEBT (OST)
7/17/00 [31]

Final Ruling: The motion is granted. The debtors have established a need for the loan and the vehicle they will purchase with it. The debtors may take a loan for a principal amount not to exceed \$18,000 with a monthly payment not to exceed \$350.

56. 00-91730-A-13 SONDRRA JO REBEIRO HEARING ON TRUSTEE'S
RDG #1 OBJECTION TO DEBTOR'S CLAIM
OF EXEMPTIONS
6/21/00 [15]

Final Ruling: The movant or the objecting party has voluntarily dismissed the matter on calendar.

57. 99-92632-A-13 DAVID DAY & IRIS RODRIGUEZ HEARING ON MOTION TO
FW #1 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
7/5/00 [33]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

58. 00-91633-A-13 ALBERTO FACTURA HEARING ON OBJECTION TO
RPB #1 CONFIRMATION OF DEBTOR'S
CHAPTER 13 FILED BY GMAC
6/28/00 [22]

Final Ruling: The debtor has failed to respond to the matter on calendar. Because the debtor has come forward with no opposition, this matter is suitable for disposition without hearing. The objection is overruled. The creditor is the lessor of a vehicle to the debtor. The plan does not expressly assume the lease with this creditor. The plan also specifies: "Any executory contracts or unexpired leases not listed in the table below are rejected." Thus, contrary to the objection, the plan does deal with the "claim" of the creditor. 11 U.S.C. § 1325 does not require surrender. Surrender is a treatment accorded secured creditors. The objecting creditor is a lessor. If the debtor does not voluntarily return the vehicle, the creditor should file the necessary motion for relief from the automatic stay.

The request for attorneys' fees incurred in connection with the objection is denied. First, the creditor did not prevail. Second, the creditor is not a secured creditor. Only over-secured creditors can obtain their fees incurred in connection with purely bankruptcy litigation.

59. 00-92042-A-13 JAMES GORMAN, JR. HEARING ON MOTION TO
VLC #1 VALUE COLLATERAL OF
BANK OF STOCKTON
7/10/00 [8]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of \$3,850 on the date of the petition. \$3,850 of its claim is an allowed secured claim. When paid \$3,850, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

60. 00-92042-A-13 JAMES GORMAN, JR. HEARING ON MOTION TO
VLC #2 VALUE COLLATERAL OF
ASSOCIATES FINANCIAL
7/21/00 [11]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of \$3,000 on the date of the petition. \$3,000 of its claim is an allowed secured claim.

When paid \$3,000, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

61. 97-92644-A-13 SAMUEL P. SAMUEL
VLC #3
- HEARING ON MOTION TO
MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
6/30/00 [47]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

62. 99-93152-A-13 TOM & JANET COLLINS
FW #1
- HEARING ON MOTION TO
INCUR DEBT (OST)
7/13/00 [48]

Final Ruling: The motion is granted. The debtors are authorized to refinance their home to obtain sufficient funds to pay off liens of record as well as all plan obligations in a manner consistent with the plan. The pay off of general unsecured claims shall include interest at the federal judgment rate as of the date of the petition.

63. 99-95054-A-13 FADERICO & CLARITA OLIPENDO
VLC #2
- HEARING ON OBJECTION TO
ALLOWANCE OF CLAIM NO. 15 OF
DHA COLLECTIONS
6/30/00 [26]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The objection is sustained and the claim is allowed as a general unsecured claim. The claim is based on the pre-petition provision of medical services to the debtor. Such claims are not entitled to priority status. 11 U.S.C. § 507.

64. 00-90757-A-13 LEATHER DONALDSOOR NEVAREZ
RDG #1
- HEARING ON TRUSTEE'S
OBJECTION TO DEBTOR'S CLAIM
OF EXEMPTIONS
6/21/00 [19]

Final Ruling: The objections are overruled as moot - the debtor has filed an amended Schedule C in response to the objection. If the amended exemptions are objectionable, the trustee and all other parties in interest have 30 days from service of the amended exemptions to file objections. Fed.R.Bankr.P. 4003(b). The court notes that the amended Schedule C has not been served on anyone.

65. 99-95060-A-13 LORENZO RECIO, JR. & HEARING ON OBJECTION TO
VLC #2 TRACY RECIO ALLOWANCE OF CLAIM NO. 32 OF
UNITED MUTUAL EMPLOYERS CU
6/30/00 [27]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The objection is sustained and the claim is allowed as a general unsecured claim. The claim is based on a pre-petition personal loan. Such claims are not entitled to priority status. 11 U.S.C. § 507(a).

66. 98-94963-A-13 JUAN & GENEVIEVE GARCIA HEARING ON MOTION TO
FW #1 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
7/10/00 [35]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

67. 99-93966-A-13 MANSOOR & PARVIN SOLEIMANI CONT. HEARING ON OBJECTION
FW #10 TO ALLOWANCE OF CLAIM OF
DOWNEY AUTO FINANCE CORP.
6/7/00 [30]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The objection is sustained. The claim is allowed in the amount of \$5,122.63. This is clear from the statement sent by the creditor shortly before the filing of the petition. The claim amount improperly included unmatured interest.

68. 99-93966-A-13 MANSOOR & PARVIN SOLEIMANI CONT. HEARING ON OBJECTION
FW #11 TO ALLOWANCE OF CLAIM OF
CITIBANK/CHOICE
6/7/00 [34]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The objection is sustained. The creditor filed a proof of claim in the amount of \$4,780.16. The amount owed on the date of the petition, based on the statement given to the debtor immediately prior to the petition, was \$4,723.00. The claim is allowed in the latter amount. **Note: this creditor filed a second proof of claim for a different credit card account. This second proof of claim, in the amount of \$7,432.81, is not affected by this ruling.**

69. 97-92070-A-13 JEANNIE STUMP HEARING ON OBJECTION
FW #2 TO ALLOWANCE OF CLAIM NO. 15
OF MERCHANTS RECOVERY SERVICES
6/23/00 [43]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for

disposition without hearing. The objection is sustained. The last date to file a timely proof of claim was September 2, 1997. The proof of claim was filed on March 9, 1998. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

70. 95-94073-A-13 DUANE & GWEN SHINAVER
SAS #2
HEARING ON PETITION FOR
AUTHORIZATION TO INCUR
INDEBTEDNESS TO REFINANCE
REAL PROPERTY
6/27/00 [22]

Final Ruling: The motion is granted. The debtors are authorized to refinance their home to obtain sufficient funds to pay off liens of record as well as all plan obligations in a manner consistent with the plan.

71. 98-93675-A-13 SARAH FOSTER
ALC #4
CONT. HEARING ON MOTION TO
MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
4/28/00 [70]

Final Ruling: The court orders this hearing continued to September 12, 2000, at 9:00 a.m., so that it may be considered with the next matter on calendar.

72. 98-93675-A-13 SARAH FOSTER
ALC #5
HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM OF THE
INTERNAL REVENUE SERVICE
6/28/00 [77]

Final Ruling: The court orders this hearing continued to September 12, 2000, at 9:00 a.m.

73. 99-93175-A-13 CARL & BRENDA AURTHA
WLG #3
HEARING ON MOTION TO
MODIFY DEBTORS' AMENDED
CHAPTER 13 PLAN
6/30/00 [38]

Final Ruling: The court finds this matter suitable for disposition without oral argument. The motion is denied and the objection is sustained. The debtor has filed a motion to modify the plan. A modified plan has not been filed or appended to the motion as an exhibit. Fed.R.Bankr.P. 3015(g) specifies that "[a] request to modify a plan pursuant to . . . § 1329 . . . shall identify the proponent and shall be filed with the proposed modification." It also requires that a copy of the proposed modification be served with the notice of the hearing.

74. 97-93476-A-13 MATTIA & SHERRI BACCARO HEARING ON MOTION TO
VLC #5 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
6/30/00 [84]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

75. 99-93076-A-13 THEODORE & MICHELLE JONES CONT. HEARING ON MOTION TO
FW #1 VALUE CLAIM OF THE
INTERNAL REVENUE SERVICE
5/12/00 [63]

Final Ruling: The matter on calendar is denied or overruled as moot - the IRS amended its proof of claim on June 22, 2000. It reduces the secured claim to \$4,197.07 as requested by the debtors.

76. 99-94576-A-13 JEFFERY & GLORIA DAVIS HEARING ON MOTION TO
FW #1 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
7/6/00 [34]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

77. 00-91478-A-13 VALERIE SIMS HEARING ON MOTION TO
FW #3 CONFIRM AMENDED CHAPTER 13
PLAN
6/30/00 [30]

Final Ruling: The movant or the objecting party has voluntarily dismissed the matter on calendar.

78. 97-92580-A-13 JON & CARMEN JESSUP HEARING ON MOTION TO
VLC #3 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
6/30/00 [72]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

79. 96-94886-A-13 STEVE & SONJA SOLARO HEARING ON SECOND MOTION TO
SAS #5 MODIFY CHAPTER 13 PLAN (OST)
7/12/00 [62]

Final Ruling: The motion is granted on condition that the plan is further amended to provide for the secured claims of Whirlpool and FDS. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

80. 96-94886-A-13 STEVE & SONJA SOLARO
SAS #7

HEARING ON DEBTORS' MOTION
TO SELL REAL PROPERTY (OST)
7/12/00 [65]

Final Ruling: The motion to sell real property is granted on the condition that the sale proceeds are used to pay all liens of record in a manner consistent with the plan. Insofar as surplus sale proceeds are available, they shall be paid over to the trustee for distribution to creditors pursuant to the plan. The debtors may wish to reconsider the sale given that the court will not approve the purchase of the new home while the case is open.

81. 99-91486-A-13 LARRY SMALLEY
FW #1

HEARING ON MOTION TO
VALUE COLLATERAL OF UNITED
CONSUMER FINANCIAL SERVICES
6/28/00 [32]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of \$500 on the date of the petition. \$500 of its claim is an allowed secured claim. When paid \$500, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

82. 99-93887-A-13 JAYME LYNN HOWE
FW #1

HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM OF
CINDY MAETUCCI
6/29/00 [29]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The objection is sustained. The proof of claim is for unpaid, pre-petition rent owed by the debtor to the claimant. Such a claim is not entitled to priority pursuant to 11 U.S.C. § 507(a)(6). That section gives priority to a deposit given to the debtor by the creditor. The debtor is not holding a deposit for the creditor.

83. 99-93887-A-13 JAYME LYNN HOWE
FW #2

HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM OF
ALPINE MARKET
6/29/00 [32]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The objection is sustained. The proof of claim is for checks from the debtor that "bounced" prior to the filing of the petition. Such a claim is not entitled to priority pursuant to 11 U.S.C. § 507(a)(6). That section gives priority to a deposit given to the debtor by the creditor. The debtor is not holding a deposit for the creditor.

84. 99-93788-A-13 DAVID & KIMBERLY HICKS
FW #5

CONT. HEARING ON MOTION TO
VALUE COLLATERAL OF FIRSTPLUS
FINANCIAL SERVICES

Final Ruling: The parties have continued the hearing on this matter to August 15, 2000, at 9:00 a.m.

85. 99-94888-A-13 BARBARA LOCKETT
FW #2
- HEARING ON MOTION TO
MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
6/30/00 [49]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

86. 99-94989-A-13 HILARIO MARTINEZ
FW #1
- HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM OF THE
STANISLAUS COUNTY DISTRICT
ATTORNEY
6/27/00 [11]

Final Ruling: The objection is sustained. The basis of the objection is that a portion of the support claim is for recoupment of welfare. This is not entitled to priority pursuant to 11 U.S.C. § 506(a)(7). The portion of the claim that represents support being collected by the county for the recipient, \$1,040.75, is entitled to priority. The balance is allowed as a general unsecured claim.

87. 99-94989-A-13 HILARIO MARTINEZ
FW #2
- HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM OF THE
FRANCHISE TAX BOARD
6/27/00 [14]

Final Ruling: The matter on calendar is denied or overruled as moot - the FTB filed an amended claim on July 18, 2000. It is no longer a secured claim. It is now a general unsecured claim except to the extent of \$373.89 which is a priority claim. This amount relates to tax year 1997. It is entitled to priority pursuant to 11 U.S.C. § 507(a)(8)..

88. 96-93593-A-13 ROBERT A. LEE
VLC #2
- HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM NO. 3521
OF GE CAPITAL MORTGAGE SERVICE
6/20/00 [36]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The objection is sustained. The last date to file a timely proof of claim was January 23, 1997. The proof of claim was filed on February 17, 1998. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

89. 99-92096-A-13 JAMIE & TAMMY MCKAUGHAN
FW #1
- HEARING ON MOTION TO
VALUE COLLATERAL OF

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of \$9,500 on the date of the petition. \$9,500 of its claim is an allowed secured claim. When paid \$9,500, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

90. 00-91759-A-13 SHANA AGRELLA

CONT. HEARING ON OBJECTION TO
CONFIRMATION OF CHAPTER 13
PLAN FILED BY HOUSEHOLD
FINANCE/BENEFICIAL
6/15/00 [10]

Final Ruling: The debtor has filed a modified plan but has failed to set a hearing on the motion to confirm it. Given the modified plan, the objections to the original plan are moot. If and when the debtors file a motion to confirm the modified plan and set it on the notice to creditors required by Fed.R.Bankr.P. 2002(b) & 3015(g).

91. 00-91759-A-13 SHANA AGRELLA
WGM #1

CONT. HEARING ON OBJECTION
TO CONFIRMATION OF CHAPTER 13
PLAN FILED BY WASHINGTON
MUTUAL BANK FA
6/12/00 [8]

Final Ruling: The debtor has filed a modified plan but has failed to set a hearing on the motion to confirm it. Given the modified plan, the objections to the original plan are moot. If and when the debtors file a motion to confirm the modified plan and set it on the notice to creditors required by Fed.R.Bankr.P. 2002(b) & 3015(g).

92. 00-91767-A-13 MICHAEL A. WEAKLEY
RDG #1

HEARING ON TRUSTEE'S
OBJECTION TO DEBTOR(S)
CLAIM OF EXEMPTIONS
6/27/00 [8]

Final Ruling: The objection is sustained. The maximum exemption under Cal. Civ. Pro. Code § 703.140(b)(1)&(5) is \$15,800. The debtors have claimed \$21,250. Therefore, all exemptions based on these sections are disallowed.

93. 99-95090-A-13 ERIC RICHARD LACOSTE

HEARING ON CONFIRMATION
OF AMENDED CHAPTER 13 PLAN
6/20/00 [48]

Final Ruling: The motion is granted. There are no timely objections to the amended plan. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

